

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 388 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

1 to 5 : No

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JYOTSNABEN D NAIK

Versus

STATE OF GUJARAT & ORS

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Appearance:

MR KB ANANDJIWALA for Petitioner

MR NIGAM SHUKLA, ADDL.PUBLIC PROSECUTOR for Respondent

No. 1-the State

Respondent No.2 appears through Assistant Commissioner of Sales Tax, Ahmedabad

Respondent No. 3 is present.

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CORAM : MR.JUSTICE S.D.DAVE

Date of decision: 22/04/96

ORAL JUDGEMENT

Rule. Learned Government Counsel Mr. Nigam Shukla waives the service of Rule on behalf of the respondent no.1-the State. The respondent no.2, the

Commissioner of Sales Tax, appears through the Assistant Commissioner of Sales Tax, who is present before me. The respondent no.3 is present in person. They also waive the service of the Rule.

The petitioner Smt.Jyotsnaben Naik appears to be a dealer. She was required to pay an amount of Rs.2,31,264/- as the dues of the Sales Tax Department. She had made the necessary request vide her letter dated January 30, 1995, asking for certain instalments to accommodate her in discharging her dues. This prayer came to be recognised vide orders dated February 9, 1995. The prayer could be recognised and the instalments have been granted. But, it appears that, on February 8, 1995, the police was moved by the Sales Tax authorities under Rule 78 of the Gujarat Sales Tax Rules, 1970 and other allied provisions. The prayer by the petitioner before me is for quashing the above said complaint made by the Sales Tax officials. A further communication dated March 11, 1996 would go to show that, the Assistant Commissioner of Sales Tax, Circle-3, Ahmedabad, was also of the opinion that, he could have compounded the case in view of the fact that the dealer was ready and willing to pay the entire amount by the instalments, but he now feels helpless as the Criminal law has been put in motion by filing the complaint before the police. Any how, the learned Assistant Commissioner of Sales Tax was of the opinion that this aspect regarding the composition should be brought to the notice of the Court. Therefore, it appears that, looking to the said development under which there was an arrangement for paying all the sales tax dues, the Assistant Commissioner of Sales Tax was also of the opinion that the petitioner should not have been prosecuted.

When the present petition comes up before me, the contention coming from learned Counsel Mr.Anandjiwala for the petitioner is that, regard being had to the facts and circumstances of the case and especially, the communications referred to above, under which the petitioner-dealer has been granted accommodation to clear up the sales tax dues by instalments, the proceedings require to be quashed. Learned Government Counsel Mr.Nigam Shukla appearing for the respondent no.1-State was not able to resist the above said contention coming from the learned Counsel for the petitioner, because it appears that, there has been some arrangement under which the petitioner-dealer has agreed with the Department to clear up the sales tax dues. The learned Government Counsel was also, after having a reference to the say of the learned Assistant Sales Tax Commissioner, not in a

position to resist the above said contention. Thus, regard being had to the facts and circumstances of the case and the opinion expressed by the Assistant Commissioner of Sales Tax, Circle-3, Ahmedabad, the present petition requires to be granted. The same is hereby accordingly granted and the complaint and the proceedings consequent thereto are hereby quashed and set aside. Rule is made absolute accordingly. Direct service is permitted.

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